

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

KELLOGG BROWN & ROOT SERVICES, INC.
601 Jefferson Street
Houston, Texas 77002,

Plaintiff

vs.

Case No. _____

UNITED STATES DEPARTMENT OF
DEFENSE,

Serve:

Civil Process Clerk
United States Attorney's Office
555 Fourth Street, NW
Washington, DC 20530

and

Eric Holder
Attorney General of the United States
950 Pennsylvania Ave., NW
Washington, DC 20530,

Defendant.

COMPLAINT FOR INJUNCTIVE RELIEF
(Freedom of Information Act)

For its complaint against the United States Department of Defense ("DoD"), Plaintiff

Kellogg Brown & Root Services, Inc. ("KBR") alleges as follows.

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, to enjoin DoD from improperly withholding agency records and to order the production of all improperly withheld agency records.

2. The records in question relate to the funding and accounting of funds on Contract No. DAAA09-02-D-0007 (“LOGCAP III Contract”), and are responsive to a FOIA request that KBR submitted to various points of contact within the DoD, including within the United States Army.

Parties

3. Plaintiff KBR is incorporated under the laws of the State of Delaware and maintains its principal place of business at 601 Jefferson Street, Houston, Texas 77002.

4. Defendant DoD is an agency of the United States of America under 5 U.S.C. § 552(f)(1) and 5 U.S.C. § 551(1).

Jurisdiction & Venue

5. This Court has jurisdiction over this claim pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

6. KBR has exhausted its administrative remedies.

7. Venue is proper pursuant to 5 U.S.C. § 552(a)(4)(B).

A. OCTOBER 19, 2012 FOIA REQUEST

8. On October 19, 2012, KBR submitted a FOIA request (“the Request”) to offices within the DoD seeking agency records related to the funding and accounting for the LOGCAP III program. A true and correct copy of the Request is attached as Exhibit 1. On or about October 19, 2012, KBR sent the Request to the addressees listed on Exhibit 1.

9. On October 31, 2012, KBR submitted another copy of the Request to an updated address for the U.S. Army Contracting Command.

1. Assistant Secretary of the Army (Financial Management and Comptroller)

10. On October 25, 2012, the Assistant Secretary of the Army (Financial Management and Comptroller) received the Request.

11. To date, KBR has received no response from the Assistant Secretary of the Army (Financial Management and Comptroller) regarding the Request.

12. The Assistant Secretary of the Army (Financial Management and Comptroller) has not made a determination on the Request within the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(i).

2. U.S. Army Contracting Command-Rock Island Contracting Center

13. On October 31, 2012, the U.S. Army Contracting Command-Rock Island Contracting Center ("Rock Island") received the Request.

14. On November 6, 2012, Rock Island informed KBR via email that it would be unable to process the Request within the twenty day time period due to a backlog of requests and further stated that it would process the requests on a first in, first out basis.

15. To date, KBR has received no further response from Rock Island.

16. Rock Island has not made a determination on the Request within the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(i).

3. U.S. Army Contracting Command-Headquarters

17. On November 5, 2012, the U.S. Army Contracting Command Headquarter received the Request.

18. To date, KBR has received no response from the U.S. Army Contracting Command Headquarters.

19. The U.S. Army Contracting Command Headquarters has not made a determination on the Request within the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(ii).

4. DoD FOIA Office

20. On October 25, 2012, the Office of the Secretary of Defense and Joint Staff FOIA Requester Service Center (“DoD FOIA Office”) received the Request.

21. To date, KBR has received no response from the DoD FOIA Office.

22. The DoD FOIA office has not made a determination on the Request within the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(i).

5. U.S. Army Materiel Command

23. By letter dated January 29, 2009, the U.S. Army FOIA Office forwarded the Request to the U.S. Army Materiel Command.

24. To date, KBR has received no response from the U.S. Army Materiel Command regarding the Request

25. The U.S. Army Materiel Command has not made a a determination on the Request within the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(i).

6. Defense Finance and Accounting Service

26. On October 24, 2012, the Defense Finance and Accounting Service (“DFAS”) received the Request.

27. On November 2, 2012, KBR received an email from DFAS stating that “DFAS does not have visibility on Army contracts” and administratively closed the case with DFAS.

28. The November 2, 2012 email failed to advise KBR of any further administrative remedies.

29. To date, KBR has received no further response from DFAS regarding the Request and DFAS has provided no records.

30. DFAS has not made a determination on the Request within the time limits prescribed by FOIA, 5 U.S.C. § 552(a)(6)(A)(i).

COUNT I - FAILURE TO COMPLY WITH FOIA

31. KBR incorporates each of the foregoing paragraphs of this Complaint.

32. Pursuant to FOIA, 5 U.S.C. § 552(a), KBR has a statutory right to access requested agency records.

33. The DoD, by and through its components, has failed to comply with the time limits prescribed by FOIA, 5 U.S.C. §§ 552(a)(6)(A)(i)-(ii).

34. The DoD has improperly withheld agency records responsive to KBR's FOIA requests.

35. The DoD has failed to conduct a reasonable search for records responsive to the requests.

36. The DoD has failed to properly respond to KBR's requests.

PRAYER FOR RELIEF

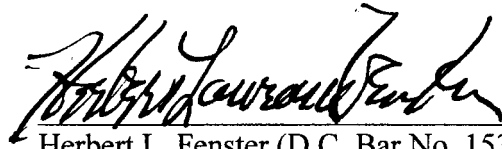
WHEREFORE, KBR respectfully requests that this Court enter a judgment for KBR and award the following relief:

- a. Enjoin DoD from withholding the requested records and order DoD to produce said records to KBR in accordance with FOIA, 5 U.S.C. § 552;
- b. Expedite the proceedings in this action;
- c. Award KBR its costs and attorney's fees reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and

- d. Grant KBR such other and further relief as the Court may deem just and proper.

February 13, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Herbert L. Fenster", is written over a horizontal line.

Herbert L. Fenster (D.C. Bar No. 153825)
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ATTORNEYS FOR PLAINTIFF

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